

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2015-001671-004 DT

10/22/2015

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT  
J. Porter  
Deputy

STATE OF ARIZONA

DANIEL FISHER

v.

MARKIEFF A MORRIS (004)

JAMES J BELANGER

RULING ON MOTION TO REMAND

The Defendants claim that the grand jury heard false and misleading testimony that all five Defendants assaulted the victim between the gym doors and the parking lot. The Defendants also claim that it was prejudicially unfair to tell the grand jury that an eyewitness said he saw the Morrisses a short distance away from where the victim was assaulted when the victim stated they were farther away. The Defendants claim that it was misleading to testify that disinterested witnesses placed the Morrisses at the gate where the victim fell and was assaulted.

In their reply, the Defendants also claim that the state falsely told the grand jury that a witness, Mustafa Helal, saw the Morrisses at the end of the property near the gate. The Defendants allege that the state misrepresented the testimony of two other witnesses to say that they saw two “very tall” black males “substantially taller” than 6’3” at the gate. The state claims that it fairly and accurately presented information to the grand jury.

A grand jury’s primary function is to determine if probable cause exists that a crime was committed and the person under investigation is the one who committed it. *State v. Baumann*, 125 Ariz. 408, 409, 610 P.2d 38, 42 (1980). The prosecutor has the duty to make a fair and impartial presentation. *Trebus v. Davis*, 189 Ariz. 621, 624, 944 P.2d 1235, 1238 (1997)(citations omitted)(“*Trebus*”). The prosecutor is obligated not to present all exculpatory

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evidence, but to present all *clearly exculpatory* evidence. *Trebus, id.* at 625, 944 P.2d at 1239 (citations omitted)(emphasis added).

After reviewing the exhibits to the motion, including the photographs and witness statements, it is clear that the witnesses each have different perspectives on what happened on January 24, 2014 to the victim, Mr. Hood. The issue here is whether the presentation to the grand jury was fair and impartial, and whether the state presented all clearly exculpatory evidence to the grand jury.

Mr. Helal indicated to the police that when he and Jacob went out of the gym, he saw the Morris twins running out to the street. Marcus was in the vicinity and Markieff started to walk towards him. In his third interview, the victim stated that Marcus kicked him and Markieff stayed back. Many of the witnesses interviewed by the police did not see any portion of the assault. Shareka Sherrod gave statements implicating all of the Defendants. Witness Haydee Sanchez confirmed that four or five people were involved in the assault.

None of the allegations raised by the Defendants amount to clearly exculpatory evidence omitted by the prosecution's presentation to the grand jury, The precise geographic location of part of the assault, what some witnesses saw while others did not, and differing versions of the assault from the victim and other witnesses, are not clearly exculpatory evidence that would affect the grand jury's probable cause determination. The grand jury was told that a number of witnesses observed little to nothing of any portion of the assault, as requested by the Defendants. The grand jury was told that the victim indicated that he could not say for sure if Markieff Morris was hitting or kicking him. The fact that specific photographs or line by line statements of each witness interview were not presented to the grand jury does not mean that the presentation itself was prejudicially misleading.

The presentation to the grand jury was fair, impartial and not misleading. The issues raised by the Defendants, claimed as facts, are really matters to be raised in cross examination at trial. The motion to remand is denied.